



06 JAN 2005

#5

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

Patent Department  
BAYER CROPSCIENCE LP  
100 Bayer Road  
Pittsburgh, Pennsylvania 15205-9741

In re Application of: : DECISION ON SUBMISSION  
MAURER, Fritz, et al. : UNDER 37 CFR 1.42  
U.S. Application No.: 10/501,414 :  
PCT No.: PCT/EP03/00058 :  
Int'l Filing Date: 07 January 2003 :  
Priority Date: 17 January 2002 :  
Attorney's Docket No.: CS-8270/LeA 35,855 :  
For: SUBSTITUTED PYRAZOLINES FOR :  
USE AS PESTICIDES :  
:

This communication is issued in response to applicants' submission on 09 December 2004 of a declaration executed on behalf of deceased inventor Christoph Erdelen by his heir Angelika Lubos-Erdelen, treated herein as a submission under 37 CFR 1.42. No petition fee is required.

**BACKGROUND**

On 07 January 2003, applicants filed international application PCT/EP03/00058 which designated the United States and claimed a priority date of 17 January 2002. On 24 July 2003, a copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) by the International Bureau (IB). The deadline for submission of the basic national fee was thirty months from the priority date, i.e., 17 July 2004.

On 12 July 2003, applicants filed a Transmittal Letter for entry into the national stage in the United States accompanied by, among other materials, payment of the basic national fee and a translation of the international application into English.

On 07 December 2004, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Missing Requirements (Form PCT/DO/EO/905) indicating that a declaration acceptable under 37 CFR 1.497 and the surcharge for filing the declaration later than thirty months after the priority date were required.

On 09 December 2004, applicants filed a response to the Notification Of Missing Requirements. The response included an authorization to charge Deposit Account No. 50-2510 for the required surcharge and an inventors' declaration executed by the three surviving inventors and on behalf of deceased inventor Christoph Erdelen by his heir Angelika Lubos-Erdelen. The declaration is considered herein under 37 CFR 1.42.

## DISCUSSION

37 CFR 1.42 states in part:

In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent.

Section 409.01(a) of the MPEP states that the application can also be executed by all of the heirs of the deceased inventor, where no legal representative has been appointed or is required to be appointed by law.

37 CFR 1.497(b)(2) states:

If the person making the oath or declaration or any supplemental oath or declaration is not the inventor (§§ 1.42, 1.43, or 1.47) the oath or declaration shall state the relationship of the person to the inventor, and, upon information and belief, the facts which the inventor would have been required to state. If the person is the legal representative of a deceased inventor, the oath or declaration shall also state that the person is a legal representative and the citizenship, residence, and mailing address of the legal representative.

Pursuant to 37 CFR 1.497(b)(2), the declaration must provide the citizenship, mailing address, and residence information for both the deceased inventor and the legal representative.

Here, the declaration filed 09 December 2004 specifically identifies Angelika Lubos-Erdelen as the “heiress” of the deceased inventor, and it includes separate citizenship, mailing address, and residence information for the deceased inventor and the heiress. The accompanying submission expressly states that Angelika Lubos-Erdelen is the “sole heir” of the deceased inventor. Accordingly, the declaration complies with the requirements of 37 CFR 1.42 and 1.497(b)(2) with respect to the signature provided on behalf of the deceased inventor.

It is noted that the submission of a declaration executed by the sole heir of the deceased inventor is hereby construed as an indication that no legal representative of the deceased’s estate has been appointed and that no legal representative is required by the applicable law to be appointed. If this interpretation is incorrect, applicant is required to promptly notify this Office of such and to submit a declaration properly executed by the legal representative of the deceased inventor in response to this decision.

## CONCLUSION

Applicants’ request for status under 37 CFR 1.42 with respect to deceased inventor Christoph Erdelen is **GRANTED**.

This application is being returned to the National Stage Processing Branch of the Office Of PCT Operations for further processing in accordance with this decision. The date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) is 09 December 2004.

*RR*

Richard M. Ross  
PCT Petitions Attorney  
PCT Legal Office  
Telephone: (571) 272-3296  
Facsimile: (571) 273-0459